



CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1310

[CPSC Docket No. 2022-0025]

Ban of Inclined Sleepers for Infants

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On May 16, 2022, the President signed into law the Safe Sleep for Babies Act of 2021 (SSBA), requiring that “inclined sleepers for infants, regardless of the date of manufacture, shall be considered a banned hazardous product” under the Consumer Product Safety Act (CPSA). Pursuant to this authority, the U.S. Consumer Product Safety Commission (CPSC, or Commission) is proposing to codify the ban on inclined sleepers for infants.

DATES: Submit comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You can submit comments, identified by Docket No. CPSC-2020-0025, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by electronic mail (e-mail), except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/hand delivery/courier Written Submissions: Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected

information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may e-mail them to: cpsc-os@cpsc.gov.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

Docket: For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, and insert the docket number, CPSC-2020-0025f, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Celestine T. Kish, Project Manager, Directorate for Engineering, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987-2547; email: ckish@cpsc.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

On May 3, 2022, Congress passed the Safe Sleep for Babies Act of 2021, H.R. 3182, Public Law No. 117-126, which the President signed on May 16, 2022. Section 2(a) of the SSBA requires that, not later than 180 days after enactment, “inclined sleepers for infants, regardless of the date of manufacture, shall be considered a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057).” 15 U.S.C. 2057d(a).

II. Description of Proposed Ban on Inclined Infant Sleepers

In this rulemaking, CPSC proposes to codify the SSBA’s mandate that “inclined sleepers for infants” are a banned hazardous product, as set forth below.¹

¹ On July 19, 2022, the Commission voted 5-0 to issue this notice of proposed rulemaking.

A. Definitions

The Commission proposes codifying the definition of “inclined sleepers for infants” as stated in section 2(b) the SSBA: “a product with an inclined sleep surface greater than ten degrees that is intended, marketed, or designed to provide sleeping accommodations for an infant up to 1 year old.”

B. Effective Date

Section 2(a) of the SSBA states that inclined sleepers for infants shall be considered a banned hazardous product “not later than 180 days after the enactment of this Act,” *i.e.*, not later than November 12, 2022. CPSC proposes to make the effective date for this ban November 12, 2022, consistent with 180-day period referenced by Congress.

C. Inventory

The SSBA states that the ban applies to inclined sleepers for infants as defined in section 2 “regardless of the date of manufacture.” Therefore, inclined sleepers for infants manufactured before the ban becomes effective will be banned hazardous products beginning on the effective date, as well as any inclined sleepers for infants manufactured or sold on or after the effective date.

III. Preemption

Section 3(b)(2)(A) of Executive Order 12988, *Civil Justice Reform* (Feb. 5, 1996), directs agencies to specify the preemptive effect of any rule. 61 FR 4729 (Feb. 7, 1996). Because the SSBA states that inclined sleepers for infants are banned hazardous products, any state performance standards for inclined sleepers for infants, as those products are defined in the SSBA, would be inconsistent with federal law and therefore preempted by this ban.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses, and identify alternatives that may reduce such impact, unless the agency certifies that the rule will

not, if promulgated, have a significant economic impact on a substantial number of small entities. The SSBA will take effect on November 12, 2022. Because the proposed rule would adopt the same effective date and is limited to codifying the relevant provisions of the SSBA with regard to inclined sleepers for infants, the proposed rule imposes no additional economic impact on small entities beyond the requirements of section 2 of the SSBA. Therefore, the Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

V. Environmental Considerations

The Commission's regulations address whether the agency must prepare an environmental assessment or an environmental impact statement. Under these regulations, certain categories of CPSC actions that have "little or no potential for affecting the human environment" do not require an environmental assessment or an environmental impact statement. 16 CFR 1021.5(c). The proposed rule codifying section 2 of the SSBA falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

VI. Paperwork Reduction Act

The proposed rule to codify inclined sleepers for infants as a banned hazardous product contains no information collection requirements that would be subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). However, if the Commission requires testing and certification to this ban, the Commission will expand the existing control number for Third Party Testing of Children's Products, OMB Control No. 3041-0159.

VII. Request for Comments

We invite comments on all aspects of the Commission's proposal to codify the ban on inclined sleepers for infants under section 2 of the SSBA with an effective date of November 12,

2022. Comments must be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this notice. We also invite comment on the following topics:

A. Effective Date: The Commission proposes to implement the inclined sleeper ban in the SSBA with an effective date of November 12, 2022. Should the Commission adopt this proposed effective date, or an alternative date “[n]ot later than 180 days after the date of enactment”? If the commenter believes that an effective date later than November 12, 2022, is permitted under section 2 of the SSBA, what is the legal basis for that assertion, and what later date should be adopted?

B. Interpretation: In 2021, the Commission promulgated its Safety Standard for Infant Sleep Products (16 CFR part 1236, the ISP Rule), which became effective on June 23, 2022. (86 FR 33022 (June 23, 2021)). Pursuant to 16 CFR 1236.2(b)(10)(i), the ISP Rule defines an “infant sleep product” as a “product marketed or intended to provide a sleeping accommodation for an infant up to 5 months of age, and that is not subject to” one of the following: 16 CFR part 1218 (bassinets and cradles); 16 CFR part 1219 (full-size cribs); 16 CFR part 1220 (non-full-size cribs); 16 CFR part 1221 (play yards); and 16 CFR part 1222 (bedside sleepers) (collectively, CPSC sleep standards).² 86 FR at 33072. The SSBA, by contrast, applies to products “marketed, intended, or designed” for infants up to 1 years old. The operative provisions of the SSBA and the ISP Rule thus are not identical. Particularly in that light, the Commission requests comment on interpreting, codifying, and enforcing the SSBA with respect to inclined sleep products, including:

1. How should the Commission interpret and implement the phrase “sleeping accommodations” for purposes of the SSBA ban?
2. What, if any, effect should inclusion of the term “designed” in the SSBA have on the Commission’s interpretation and implementation of the SSBA as compared to the ISP Rule? For example, what significance, if any, might “designed” have for inclined

² If an infant sleep product does not already comply with a CPSC sleep standard, the ISP Rule requires the sleep surface angle to measure 10 degrees or less, and the product must meet part 1218 of the Commission’s Rules, the bassinet standard, including the definition of a bassinet, meaning the product must have a stand. The ISP Rule applies to both flat and inclined products.

- products that are not marketed for sleep but in which an infant may fall asleep, such as bouncers, swings, and rockers?
3. In the SSBA, what product characteristics, if any, demonstrate that a product is “designed” for sleep?
 4. How should the Commission interpret and implement the terms “marketed” and “intended” as a sleeping accommodation in the SSBA? Should these terms be interpreted and implemented the same as in the ISP Rule? Why or why not?
 5. What is the significance of the age distinction between the ISP Rule and the SSBA’s ban? How might this difference bear on implementation of the SSBA as compared to the ISP Rule, including with respect to developmental differences between a newborn to 5 month old as identified in the ISP Rule, versus a newborn to 1 year old as identified in the SSBA?
 6. How, if at all, should the SSBA’s ban of inclined sleepers for infants affect the ISP Rule or the Commission’s application of it?

C. Testing and Certification: When a ban does not remove all products in a product category from the market, testing and certification requirements may apply. For example, CPSC requires a General Certificate of Conformity (GCC) for certain banned hazardous products. *See, e.g.,* <https://www.cpsc.gov/Business--Manufacturing/Testing-Certification/Lab-Accreditation/Rules-Requiring-a-General-Certificate-of-Conformity>, CPSC’s website providing guidance that bans set forth in 16 CFR parts 1304, 1305, and 1306 require a GCC. In this case, inclined sleepers with an inclined sleep surface of 10 degrees or less, or that are marketed, intended, or designed to provide sleeping accommodations for an infant older than 1 year, are not within the scope of the SSBA’s ban. To the extent inclined sleepers remain on the market that are not banned by this rule, and that are not regulated under the ISP Rule, should CPSC require testing and certification to this ban, to demonstrate that a product is *not* within the scope of the ban? Why, or why not?

List of Subjects

16 CFR Part 1310

Administrative practice and procedure, Consumer protection, Infants and children.

For the reasons stated in the preamble, the Commission proposes to add part 1310 to title 16 of the Code of Federal Regulations as follows:

PART 1310 – BAN OF INCLINED SLEEPERS FOR INFANTS

Sec.

1310.1 Purpose and scope

1310.2 Definition

1310.3 Banned hazardous product

1310.4 Effective date

Authority: Sec. 2, Pub. L. No. 117-126, 136 Stat. 1208; 15 U.S.C. 2057d.

§ 1310.1 Purpose and scope

The purpose of this rule is to prohibit the sale of inclined sleepers for infants as set forth in the Safe Sleep for Babies Act of 2021.

§ 1310.2 Definition

Inclined sleeper for infants means “a product with an inclined sleep surface greater than ten degrees that is intended, marketed, or designed to provide sleeping accommodations for an infant up to 1 year old.”

§ 1310.3 Banned Hazardous product

Any inclined sleeper for infants, regardless of the date of manufacture, is a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057).

§ 1310.4 Effective date

The effective date of this ban is November 12, 2022.

Alberta E. Mills,
Secretary, Consumer Product Safety Commission.

[FR Doc. 2022-15904 Filed: 7/25/2022 8:45 am; Publication Date: 7/26/2022]